



Paper No. 7

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COPY MAILED**OCT 29 2002****OFFICE OF PETITIONS**

In re application of:
Yu, et al.
Application No.: 09/683,003
Filed: November 7, 2001
Attorney Docket No.: 6601
For: COMPOSITION AND METHOD

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed October 21, 2002 (certificate of mailing date October 15, 2002), requesting review of the above-identified application papers. The petition will be treated under 37 CFR 1.181 as (1) a request to reset the period to respond to a Notice to File Missing Parts (Notice) due to late delivery of the Notice and (2) a request to withdraw the holding of abandonment in this case.

The petition under 37 CFR 1.181 to reset the period for response is **GRANTED**.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

PETITION TO RESET THE PERIOD FOR RESPONSE

The mail date listed on the Notice in question is December 7, 2001. This Notice was mailed to applicants at the correspondence address of record. Petitioners assert that delivery of the Office action was late and that the Office action was not received until February 25, 2002, which is after the two month period for reply expired. To support this assertion, petitioners have supplied their copy of the Notice having a date of receipt at the correspondence address of record of February 25, 2002 stamped thereon and a copy of the envelope that the correspondence was mailed in showing a February 21, 2002 postmark. In addition, the request for a one month extension of time that was submitted on March 12, 2002 and resubmitted with the instant petition states that the Notice was not received until February 25, 2002.

MPEP § 710.06 states:

The Patent and Trademark Office will grant a petition to restart the previously set period for reply to a PTO action to run from the postmark date shown on the PTO mailing envelope which contained the PTO action when the following criteria are met:

- (A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
- (B) a substantial portion of the set reply period had elapsed on the date of receipt;
- (C) the petition includes (a) evidence showing the date of receipt of the Office action at

the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, (b) a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (c) a statement setting forth the date of receipt of the Office action at the correspondence address.

Petitioners have presented sufficient evidence to establish February 25, 2002 as the date of receipt of the Notice at the correspondence address:

The petition under 37 CFR 1.181 to reset the period for reply due to late receipt of an office action is **GRANTED**.

The two month period for reply is hereby reset to run from February 25, 2002, which is the date of receipt of the Notice at the correspondence address of record.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A Notice of Abandonment was mailed on October 3, 2002. Petitioners request that the holding of abandonment be withdrawn.

The Notice to File Missing Parts of Nonprovisional Application mailed December 7, 2001 required petitioners to file an executed oath/declaration within two months. Petitioners assert that they filed an executed declaration and a one month extension of time and required fee on March 12, 2002, which would be prior to the new April 25, 2002 deadline for response.

A review of the application file reveals that the March 12, 2002 declaration and the one month extension of time are present.

Accordingly, petitioners timely filed the required reply to the Notice on March 12, 2002, which is prior to the new April 25, 2002 deadline for action.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

Regarding finances, a review of Office financial records for this application reveals that petitioners did not submit the \$130.00 surcharge for filing a late declaration, as was required by the Notice. Therefore, the unnecessary \$110.00 one month extension of time fee filed on March 12, 2002 will be allocated towards the unpaid \$130.00 surcharge. An additional \$20.00 will be charged to petitioners' deposit account to make up the balance of the surcharge.

The application is being returned to the Office of Initial Patent Examination for further processing.

Thereafter, the application will be forwarded to Technology Center 1600 for examination in due course. Telephone inquiries should be directed to the undersigned at (703) 308-6712.



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